

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

UNITED STATES OF AMERICA,)	CASE NO. 1:18-CR-708
)	
Plaintiff,)	JUDGE CHRISTOPHER A. BOYKO
)	
v.)	
)	
KENNETH TYSON,)	<u>JOINT MOTION TO CONTINUE</u>
)	<u>ARRAIGNMENT, CHANGE OF PLEA,</u>
Defendant.)	<u>AND SENTENCING DATE</u>

Defendant Kenneth Tyson, through his undersigned counsel, and the United States, through its undersigned counsel, respectfully move for a continuance of Kenneth's arraignment, change of plea, and sentencing date currently scheduled for October 20, 2020. For the reasons set forth in this joint Motion, the parties respectfully request at least a 90-day continuance of the arraignment, change of plea, and sentencing date.

Currently, the case is set for an arraignment, change of plea, and sentencing on October 20, 2020. As it stands now, the sentencing will be contested and may require several witnesses from both sides. The parties are aware of Chief Judge Gaughan's September 25, 2020 order stating that, due to the novel coronavirus pandemic, for at least the next 90 days, felony pleas and felony sentencings cannot be conducted in person in this district without seriously jeopardizing public health and safety unless the Court makes certain findings.

To limit the issues—and potentially number of witnesses that must be called—at sentencing, the parties believe that at least one of the contested issues could be resolved by this

Court through pre-sentence briefing. Specifically, the parties contest whether the Court should apply U.S.S.G § 2B1.1 or U.S.S.G § 2J1.2 to the violation to which Kenneth intends to plead guilty, *i.e.*, one count of 18 U.S.C. § 1001. While the parties believe this threshold determination is a purely legal issue, it may affect the need to call certain factual witnesses at hearing based on which guideline the Court applies. Accordingly, the Court's determination on this issue in advance will help to streamline the sentencing and potentially mitigate the need to call certain witnesses.

With the Court's permission, the parties propose the following briefing schedule from the date of the Court's decision on this motion: the parties seek 30 days to file opening briefs, and then 30 days from then to file briefs in oppositions. The parties then seek 14 days to file replies, if any. The parties can soon thereafter present oral argument on this threshold issue, which could be via videoconference, if the Court prefers. The parties request, then, that sentencing be set 30 – 45 days after the Court rules upon the issue to be briefed, that is: whether, as a threshold matter, U.S.S.G. § 2B1.1 or § 2J1.2 applies to a single count violation of 18 U.S.C. § 1001 pursuant to the Supplemental Information and Plea Agreement in this case.

Defense counsel has communicated with Assistant U.S. Attorneys Chelsea Rice and Vanessa Healy, counsel for the United States, and the United States joins in this motion. Further, Kenneth has consented to this request for a continuance in writing. (*See* Defendant's Consent, attached as Exhibit A.)

This request has not been made for the purpose of undue delay or harassment. This request is made in good faith and for good cause, will not unfairly prejudice any party, and is necessary to ensure that the parties may resolve contested issues, and that Kenneth may appear in-person for his sentencing hearing.

For good cause shown, Kenneth respectfully requests that this Court continue the arraignment, change of plea, and sentencing, as well as all other filing deadlines, for at least 90-days and that the proposed briefing schedule be set.

Respectfully submitted,

/s/ Chris N. Georgalis
Christos N. Georgalis (OH: 0079433)

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Attorneys on behalf of the Government

CERTIFICATE OF SERVICE

I hereby certify that on October 6, 2020, a copy of the foregoing was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.


/s/ Chris N. Georgalis
Christos N. Georgalis

Attorney for Defendant Kenneth Tyson

Exhibit A

I, Kenneth Tyson,

Agree to have my attorneys seek a continuance of my arraignment, change of plea, and sentencing, for the reasons stated in the attached joint motion to continue. I understand my right to a speedy trial; however, because of the current pandemic and Chief Judge Gaughan's September 25, 2020 order, I would not be permitted to appear in-person for a contested sentencing hearing. Therefore, I consent to at least a 90-day continuance.


Kenneth Tyson


Date